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WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

DEMITRIUS A. FAUL : DOCKET NO. 2:10 CV1338

VS. : JUDGE MINALDI

MICHAEL J. ASTRUE, : MAGISTRATE JUDGE KAY
COMMISSIONER, UNITED STATES
SOCIAL SECURITY
ADMINISTRATIONJUDGMENT

On May 18, 2011, the Magistrate Judge issued a Report and Recommendation, in which the Magistrate Judge recommended that the plaintiff's lawsuit be dismissed for lack of prosecution under Local Rule 41.3W. [Doc. 6]. From August 24, 2010, the date the plaintiff originally filed this lawsuit [Doc. 1], to May 18, 2011, the plaintiff failed to effectuate service of process on the defendant or take any other action in this case. *See* LR 41.3W ("A civil action may be dismissed . . . for lack of prosecution . . . [w]here no service of process has been made within 120 days after filing of the complaint . . . and [w]here a cause of action has been pending six months without proceedings being taken within such period").

The plaintiff filed an objection to the Magistrate Judge's Report and Recommendation on May 31, 2011, in which the plaintiff's attorney indicated that he mistakenly believed the clerk of court would automatically serve the defendant through the CM/ECF system. [Doc. 7]. On the same day, the plaintiff filed an ex parte Motion for Extension of Time to Effect Service of Process, requesting an additional 60 days to serve the defendant. [Doc. 8]. Finding the plaintiff's 60 day request "unreasonable in light of the nearly 10 month delay in serving the defendant," this Court granted the plaintiff an additional 14 days to serve the defendant and warned the plaintiff

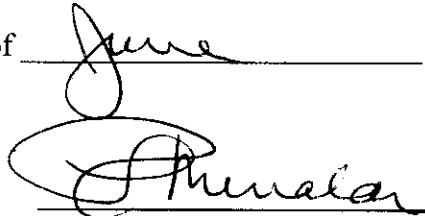
“that if proof of service is not filed within 14 days, this Court will adopt the Report and Recommendation of the Magistrate Judge.” [Doc. 9].

Just days after this Court’s 14 day deadline passed, the plaintiff submitted a Certificate of Service, which provided proof of service on the U.S. Attorney for the Western District of Louisiana in Shreveport, LA, and the United States Attorney General. [Doc. 10]. But, the plaintiff apparently failed to serve, and has definitely failed to provide proof of service of, the Office of the General Counsel, Social Security Administration. On June 23, 2011, the clerk of court informed the plaintiff’s attorney of this defect. [Doc. 11].

Accordingly, for the reasons stated above and in the Report and Recommendation of the Magistrate Judge previously filed herein and after an independent review of the record, and a *de novo* determination of the issues, it is

ORDERED that the plaintiff’s case is DISMISSED without prejudice for failure to prosecute and failure to effect service on the defendant.

Lake Charles, Louisiana, this 28 day of June 2011.



PATRICIA MINALDI
UNITED STATES DISTRICT JUDGE